

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL FRANCIS MOYNIHAN, JR.,

Plaintiff,

v.

SWINOMISH TRIBAL POLICE  
AGENCY,

Defendant.

CASE NO. C10-502 RSM

ORDER ON DISMISSAL

**I. INTRODUCTION**

This matter comes before the Court on Motion to Dismiss brought by Defendant Swinomish Tribal Police Agency (“Defendant”) under Fed. R. Civ. P. 4(m) for failure to serve the summons and complaint. In the underlying suit, Plaintiff Moynihan (“Plaintiff”), who is proceeding *pro se*, brought a claim alleging that Swinomish Tribal Police Officer detained him without authority. However, pursuant to U.S.C. 28 § 1915(e)(2)(B)(ii) concerning proceedings *in forma pauperis*, a court shall dismiss a case at any time if the court determines that the action

1 fails to state a claim on which relief may be granted. Therefore, the Court *sua sponte* addresses  
 2 dismissal under § 1915(e), and need not reach the issue of service under Rule 4.

## 3 **II. BACKGROUND**

4 Plaintiff initially filed a Petition for Writ of Mandamus requesting that this Court order  
 5 Defendant to comply with Plaintiff's request for information under the Freedom of Information  
 6 Act ("FOIA"). In response, this Court issued an Order to Show Cause (Dkt. #6) explaining that  
 7 FOIA is applicable only to agencies of the federal government, and directing Plaintiff to show  
 8 cause why his petition should not be dismissed. In response, Plaintiff filed a Complaint (Dkt.  
 9 #7), which this Court held to supersede the original pleading. *See* Dkt. #8.

## 10 **III. DISCUSSION**

11 Pursuant to § 1915(e)(2)(B)(ii) concerning proceedings *in forma pauperis*, a court shall  
 12 dismiss a case at any time if the court determines that the action fails to state a claim on which  
 13 relief may be granted. Plaintiff's complaint alleges that a Swinomish Tribal Police Agent  
 14 detained him without authority. Plaintiff seeks redress and damages arising from this alleged  
 15 wrongful detention. As such, Plaintiff's action against the Swinomish Tribal Police Agency  
 16 seeks to impose liability under 42 U.S.C. § 1983.

17 In *Evans v. McKay*, the Ninth Circuit held that actions under § 1983 "cannot be  
 18 maintained in federal court for persons alleging a deprivation of constitutional rights under color  
 19 of tribal law." 869 F.2d 1341, 1347 (9<sup>th</sup> Cir. 1989). In the case before this Court, Defendant, a  
 20 tribal police agency, was acting under color of tribal law. In order to maintain an action under §  
 21 1983, a plaintiff must show "that the conduct complained of was committed by a person acting  
 22 under color of *state* law." *Id.* Plaintiff Moynihan has made no such showing. Therefore,  
 23 Plaintiff cannot maintain a claim for wrongful detention against Defendant.  
 24

Moreover, Plaintiff again appears to request information pursuant to FOIA. To the extent that Plaintiff reiterates his request pursuant to FOIA, he does not cure the deficiencies previously identified by the Court. *See* Dkt. #6. Finally, while the Court has difficulty construing the remainder of Plaintiff's argument, Plaintiff has not stated any additional cognizable claims or causes of actions. "A district court lacks the power to act as [a] party's lawyer, even for *pro se* litigants." *Bias v. Moynihan*, 508 F.3d 1212, 1219 (9<sup>th</sup> Cir. 2007) (internal citations omitted). Moreover, "[a] *pro se* litigant proceeds with knowledge of the risk of litigating without legal representation." *Id.*

#### IV. CONCLUSION

The Court therefore finds that Plaintiff fails to state a claim, and as such this action is dismissed under § 1915(e)(2)(B)(ii). Having reviewed the relevant pleadings and declarations, and the remainder of the record, the Court hereby finds and ORDERS:

- (1) This action is DISMISSED. The Clerk is directed to close this case.
- (2) All pending motions are moot, and are therefore terminated.
- (3) The Clerk is directed to forward a copy of this Order to Plaintiff (*pro se*) and to all counsel of record.

Dated May 6, 2011.



RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE